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7
8 BEFORE THE
NATIONAL LABOR RELATIONS BOARD
9 REGION 31

10 In the Matter of:) **POST HEARING BRIEF**
11) **SUBMITTED ON BEHALF OF**
Local 40, International Brotherhood of) **INTERESTED PARTY NATIONAL**
12 Electrical Workers, AFL-CIO,) **ASSOCIATION OF BROADCAST**
13) **EMPLOYEES & TECHNICIANS,**
Charged Party,) **LOCAL 53, COMMUNICATIONS**
14) **WORKERS OF AMERICA,**
and) **AFL-CIO**
15)
NBCUniversal Medial, LLC,) Case No. 31-CD-149956
16)
17 Charging Party,)
18)
and)
19)
Universal City Studios, LLC,)
20)
21 Employer,)
22)
and)
23)
National Association of Broadcast)
24 Employees & Technicians, Local 53)
25 Communications Workers of America,)
AFL-CIO,)
26)
27 Party-In-Interest.)
28)
_____)

1 **I. INTRODUCTION**

2 This matter is before the Board pursuant to Section 10(k) of the National Labor
3 Relations Act (the “Act”).¹ Hearings were held in this proceeding on May 13 and 14, 2015
4 before NLRB Region 31.² At the conclusion of the May 14 hearing, the due date for the
5 parties’ post-hearing briefs was originally set for May 21, 2015. By and through a joint
6 request for an extension of time joined by all parties herein, the due date was extended until
7 May 29, 2015.

8 The instant post-hearing brief is submitted by Intervenor/Party-in-Interest National
9 Association of Broadcast Employees and Technicians, Local 53, Communications Workers
10 of America, AFL-CIO (“NABET Local 53”). The work at issue in this 10(K) proceeding
11 consists of the installation, operation, maintenance and repair of heating, ventilation, and air
12 conditioning systems, and the electrical and plumbing systems plant maintenance at a facility
13 known as the Tom Brokaw News Center (the “Brokaw News Center”), which is physically
14 situated at Universal City, California. Through this Brief, NABET Local 53 shall establish
15 that the relevant Section 10(k) factors tip in favor of a determination that this disputed work
16 should be awarded to NABET Local 53-represented employees as opposed to those
17 represented by International Brotherhood of Electrical Workers, Local 40.

18 **II. STATEMENT OF FACTS**

19 As was illustrated at the hearing conducted at the Offices of Region 31 on May 13 and
20 14, 2015, the instant Section 10(k) matter concerns the competing claims of two labor
21 organizations over who shall perform work associated with the heating, ventilation and air
22 condition systems that support the Brokaw News Center situated on property owned by the
23 Employer, Universal City Studios, LLC (“Universal”). The labor organizations claiming
24

25 ¹The Charge - filed by the Employer Universal City Studios LLC - alleged that the Charged Party -
26 IBEW Local 40, violated §(b)(4)(ii)(d) of the Act by coercing the Employer with regard to the assignment of the
27 work at issue herein.

28 ²The hearing was transcribed by a Court reporter and was recorded in two volumes. Herein, citations to
the transcript will be abbreviated as “TR Vol 1: [page number]” for the first volume of the transcript and “TR
Vol. 2: [page number]” for the second volume of the transcript.

jurisdiction over the disputed work are: (1) the National Association of Broadcast Employees and Technicians, Local 53, AFL-CIO (“NABET Local 53”) and (2) International Brotherhood of Electrical Workers, Local 40, AFL-CIO (“IBEW 40”). Both labor organizations have longstanding collective bargaining relationships with either Universal or entities related to Universal.

In this regard, and as is more fully discussed below, the evidence adduced at the hearing in this matter demonstrates that Local 53 has maintained a decades-long collective bargaining relationship with NBCUniversal Media, LLC (hereinafter “NBC Universal”), the current tenant of the Brokaw News Center. Moreover, the record evidence also illustrates that employees represented by NABET Local 53 - who were employed and assigned to work at the location formally occupied by NBC Universal³ - possess the skill and ability to perform the work in question, that the practice in broadcast industry (as opposed to the motion picture industry) is for NABET Local 53 employees to perform HVAC maintenance and repair work on facilities from which the broadcaster produces its television product and that the contractual language between NABET Local 53 and NBC Universal is extraordinarily clear with respect to not only the assignment of the work in dispute, but also that such work shall travel to wherever NBC Universal, within the confines of Los Angeles County, engages in television broadcast production work.

NABET Local 53 now turns to a general overview of the evidence adduced at the hearings held on May 13 and 14, 2015. It is the position of NABET Local 53 that, when paired with the applicable Section 10(k) standards, the evidence shows that NABET Local 53 should be awarded jurisdiction over the disputed work.

A. RELEVANT BARGAINING HISTORY

This Section 10(k) proceeding concerns four parties in two separate bargaining relationships. NABET Local 53 now reviews those collective bargaining relationships.

³E.g., the former NBC Universal Burbank Studio., which was the Los Angeles Broadcasting hub for NBC Universal for approximately forty (40) plus years before NBC Universal physically moved its operations to the Brokaw Center.

1 **1. The IBEW 40 and Universal City Studios Bargaining Relationship.**

2 The bargaining relationship between IBEW 40 and Universal Studios LLC apparently
3 stems back several decades. As is illustrated in Joint Exhibit 2 - the IBEW 40/AMPTP CBA
4 (hereinafter the “AMPTP CBA”) - the collective bargaining agreement between IBEW 40
5 and Universal covers a multi-employer bargaining unit. Further, the evidence also illustrates
6 that the language extant in Joint Exhibit 2 has remained static, at least with respect to its
7 application to the disputed work, for many contract cycles and/or to facilities from which
8 NBC Universal creates and distributes broadcast product.⁴

9 More to the point, there is no specific language within Joint Exhibit 2 - the AMPTP
10 CBA - that makes it applicable to work performed at the Brokaw News Center. Likewise,
11 there is no language or bargaining history which establishes that the AMPTP CBA was
12 expressly intended to cover HVAC and related building maintenance work at the Brokaw
13 News Center.

14 **2. Bargaining History Between NABET Local 53 and NBC Universal**

15 NABET Local 53 and NBC Universal, as well as the predecessors of NBC Universal,⁵
16 have maintained a decades long bargaining relationship.⁶ For the vast majority of the
17 bargaining relationship between NBC Universal and NABET Local 53 - which dates back to
18 before 1975 - the work covered by the parties’ CBA was performed at the NBC Studios,
19 located in Burbank, California, less than two miles from the Universal Lot (hereinafter the
20 “Burbank Studio”). The Burbank Studio housed the television broadcast facilities for NBC
21 Universal for decades, until approximately 2014. At the Burbank Studios - which was a
22 “stand alone” facility for purposes of its HVAC/power delivery systems – employees
23 represented by NABET Local 53 supported and were assigned to all facets of equipment
24
25

26 ⁴ TR Vol. 1: 30, 38, 42, 144-45; Joint Exhibit 2.

27 ⁵These entities include, but are not limited to, General Electric, Vivendi, and Comcast Corporation. TR
28 Vol. 1: 184.

⁶ TR Vol. 2: 238-42

1 maintenance, repair and operational duties.⁷

2 The bargaining relationship between NABET Local 53 and NBC Universal has
3 resulted in a collective bargaining agreement that expressly covers numerous and disparate
4 types of work, and workplace duties, that are directly related to the television broadcast
5 industry. Over the life of the bargaining relationship between NABET Local 53 and NBC
6 Universal, the parties have expressly bargained for and included specific language that
7 extends the coverage of their collective bargaining agreement - Joint Exhibit 1 - to HVAC
8 and building maintenance work necessary for the support of NBC Universal's broadcast
9 business.⁸

10 Indeed, the inclusion of HVAC and building maintenance duties within the NABET
11 Local 53/NBC Universal CBA resulted in a completely separate section of that contract
12 which is denominated as: "Article L. Air Conditioning and Plant Maintenance Agreement"
13 (hereinafter the "L Contract."). The "L Contract" relates to and covers the performance of
14 heating, ventilation, air conditioning and building maintenance duties. In particular, the "L
15 Contract" provides that its terms apply ". . .to all Air Conditioning employees and
16 Maintenance Employees employed by the Company in Los Angeles County, California,
17 excluding department supervisors."⁹

18 Moreover, the "L Contract" sets forth very specific and precise descriptions of the
19 duties assigned to the classifications covered by that contractual provision. In this regard, the
20 "L Agreement" describes, with exacting detail, all duties – such as the repair, installation and
21 maintenance of HVAC systems, as well as all appurtenant equipment, the maintenance of
22 boiler systems, etc. – to be performed by the foregoing classifications set forth in the "L

25 ⁷ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52.

26 ⁸ Joint Ex. 1 at 144-45.

27 ⁹ See Joint Exhibit 1, at pg. 144. Per the testimony at the hearing in this matter, the NABET Local
28 53/NBC Universal CBA is an "Master Agreement" which covers substantially disparate types of classifications.
In this regard, the NABET Local 53/NBC Universal CBA covers not only air conditioning employees but also
other classifications not at issue here, such as broadcasting technicians, camera operators, etc. TR Vol. 2: 231-
37. See generally Joint Exhibit 1.

1 Contract.” No similar express language appears in the AMPTP CBA.¹⁰

2 Furthermore, the NABET Local 53/NBC Universal bargaining relationship expressly
3 contemplated, through specific contractual language, the portent of NBC physically moving
4 its broadcast facilities from the Burbank Studio to another location. In this regard, the
5 NABET/ NBC Universal CBA, at its “Side Letter 61,” contains the following contractual
6 promise:

7 “This will confirm that the Company will not assert, based solely on a change of
8 location from the Company’s Burbank facility to another location within the Los
9 Angeles Metropolitan area of an entity(s) and operation(s) or operation(s) covered
10 under the preamble to the Master Agreement, that such entity(s) and/or operation(s) is
no longer covered under such preamble.”¹¹

11 The evidence adduced at the hearing established that Side Letter 61 was negotiated at
12 a time when there were concerns, on the part of NABET Local 53, that NBC Universal
13 would, in fact, move its broadcast operations from the Burbank facility to another location.
14 In response to the raising of these concerns at the 2006 bargaining cycle, NBC Universal
15 proposed to NABET the language which now appears at Paragraph 61. As represented by the
16 NBC bargaining representatives to NABET, the language set forth at Paragraph 61 was
17 NBC’s good faith proposal to allay concerns, expressed by NABET Local 53, that HVAC
18 and building maintenance work would not be awarded to non-NABET employees should
19 NBC Universal relocate from the Burbank facility.¹² No countervailing testimony or
20 evidence was presented, on the meaning and intent of Paragraph 61 to Joint Exhibit 2, by
21 either Universal Studios or IBEW 40.

22 In contrast to the specific language contained in the NABET/NBC Universal CBA, the
23 CBA between Local 40 and the AMPTP provides merely that the terms of said CBA applies
24 to employees “. . .employed by Producer to perform services in the County of Los Angeles. .
25 .”. and generically states that the CBA applies to “repair and maintenance” work. Further,
26

27 ¹⁰ See Joint Exhibit 1, at pp. 144-145.

28 ¹¹ See Joint Exhibit 1, at pg. 289.

¹² Vol. 2: 242-244, 322-24; Joint Exhibit 5A and 5B.

1 and although Paragraph (h) of Paragraph 81 mentions air conditioning work, the applicability
2 of this provision extends only insofar as what is consistent with Universal's "historical
3 custom and practice and normal operation of such equipment and systems consistent with
4 [Universal's] historical custom and practice."¹³

5 The foregoing language contains no further provisions with respect to the assignment
6 or performance of the disputed work under the AMPTP CBA, nor does it expressly apply to
7 work in support of NBCUniversal's broadcast properties. Rather, other than the above-
8 quoted language, the IBEW 40/AMPTP CBA makes no explicit reference to employee
9 classifications that are assigned to heating, ventilation and/or air conditioning work.

10 **B. NBC UNIVERSAL RELOCATES FROM THE BURBANK LOT TO**
11 **THE UNIVERSAL LOT.**

12 Sometime in the late 2000's, NBC Universal sold the physical property that contained
13 the then NBC Universal Burbank Studios. The entity which purchased the Burbank facility
14 from NBC Universal was, and most likely remains, an investment vehicle that, in turn, leases
15 the broadcast production studios at the Burbank facility to third party production
16 companies.¹⁴

17 For approximately five to six years after ownership of the Burbank facility changed
18 hands, NBC Universal continued to occupy and broadcast from that property and NABET
19 Local 53 employees contained to perform all facets of HVAC and building maintenance
20 work thereat. At some point in 2012, the owner of the Burbank Studios decided to
21 subcontract all HVAC and building maintenance work at the Burbank facility. As a result, all
22 NABET Local 53 represented employees, performing HVAC and building maintenance
23 work, were laid off from their employment at the Burbank Studio in December 2012.¹⁵

24 Prior to the 2012 layoff, NABET Local 53 had learned that NBC Universal was, itself,

27 ¹³ Joint Exhibit 2, at pg. 165.

28 ¹⁴ TR Vol. 1: 50, 74-76, 80.

¹⁵ TR Vol. 1: 50, 74-76, 80-82. Vol. 2: 259, 300-302

1 planning to relocate its broadcast functions from the Burbank Studio to the Universal lot.¹⁶
2 Subsequently, in late 2013 and continuing into 2014, the vast majority of NBC Universal
3 broadcast operations, emanating from Los Angeles, were relocated to and are now broadcast
4 from the Brokaw News Center at the Universal City lot, located in Universal City,
5 California.¹⁷

6 **C. GENESIS OF THE DISPUTE.**

7 In or about August or September 2013, NABET Local 53 was advised that building
8 maintenance and HVAC work at the Brokaw Center would not be assigned to NABET Local
9 53 represented employees. Rather, NABET Local 53 was informed –by Mr. Mark
10 Higginbotham - that pursuant to the CBA between Universal Studios LLC and IBEW Local
11 40, employees represented by IBEW Local 40 would perform all HVAC and building
12 maintenance work with respect to the Brokaw Center.¹⁸

13 Upon learning that the HVAC and building maintenance work would be performed by
14 employees in the IBEW Local 40 bargaining unit, NABET Local 53 filed a grievance against
15 NBC Universal.¹⁹ Although not fully explained in the record, the fact of NABET Local 53's
16 grievance filing was somehow transmitted to IBEW Local 40. In turn, IBEW Local 40
17 threatened to picket Universal Studios LLC, to obtain jurisdiction over the disputed work,
18 should Universal City's LLC award the HVAC and building maintenance work, at the
19 Brokaw Center, to employees represented by NABET Local 53.²⁰

20 Thereafter, the present Charge was filed by Universal Studios LLC against IBEW

22 ¹⁶ TR Vol. 2: 253.

23 ¹⁷ TR Vol. 1: 44-46, 66. TR Vol. 2: 265-66.

24 ¹⁸ TR Vol. 1: 44-45; Vol. 2: TR 261-62. It is apparent that Mr. Higginbotham was serving, at the very
25 least, two masters with respect to this matter. On the one hand, Mr. Higginbotham has acted as Labor Relations
26 representative for NBC Universal with regard to the processing of grievances filed by NABET Local 53 under
27 the NABET/NBC Universal CBA. TR Vol. 1: 62, 69; Joint Exhibit 3A; Employer Exhibit 1. At the same time,
Mr. Higginbotham was also apparently acting in the capacity as the authorized representative of Universal City
Studios, LLC with regard to the subject matter of this hearing.

28 ¹⁹ TR Vol. 2: 268-70; Joint Exhibit 3A and 3B.

²⁰ Board Exhibit 2, at ¶ 10; Joint Exhibit. 4.

1 Local 40 and NABET Local 53 subsequently intervened in the matter.²¹ As such, the Region
2 determined that this matter involved a dispute over which union would be ordered the work
3 in question and, on April 28, 2015 issued a Section 10(k) notice.²²

4 **III. BOARD JURISDICTION**

5 Before the Board may proceed with determining a dispute pursuant to Section 10(k) of
6 the Act, there must be reasonable cause to believe that Section 8(b)(4)(ii)(D) of the Act has
7 been violated. This standard requires that the Board be satisfied that: (1) there are competing
8 claims for the disputed work among rival groups of employees; (2) a party has used
9 proscribed means to enforce its claims to the work in dispute; and (3) the parties have not
10 agreed on a method for voluntary resolution of the dispute. *Laborers Int’l Union of North*
11 *America (Eshbach Brothers, LP)*, 344 NLRB 201, 202 (2005) (internal citations omitted).

12 Here, the parties stipulated that NABET Local 53 and IBEW Local 40 are both
13 claiming the work in dispute and that there is no agreed upon method for voluntary resolution
14 of the dispute over the work in question.²³ Further, the parties stipulated that IBEW Local 40
15 threatened economic action, such as picketing, if NABET Local 53 continued to claim or was
16 assigned the disputed work.²⁴ In doing so, IBEW Local 40 has sought to enforce its claims to
17 disputed work by proscribed means. *Int’l Union of Operating Engineers, Local 137*, 355
18 NLRB 330, 332 (2010) (“It is well established that threats of picketing and work stoppages
19 constitute proscribed means.”).

20 As such, NABET Local 53 concurs that the instant matter is properly before the
21 Board.

22 **IV. MERITS OF THE DISPUTE**

23 The jurisdictional perquisites having been met, Section 10(k) requires the Board to
24 then make an affirmative award of the disputed work to one of the groups of employees

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26 ²¹ Board Exhibit 1(a) and 1(d).

27 ²² Board Exhibit 1(e).

28 ²³ Board Exhibit. 2, at ¶¶ 6, 8, & 9.

²⁴ Board Exhibit. 2, at ¶ 10.

involved in the dispute. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 579 (1961). Among the factors the Board considers in determining which group of employees should be awarded the disputed work are: (1) Board certifications and collective bargaining agreements; (2) the past practice of the employer, (3) the employer's preference, (4) the skills and training of employees, (5) efficiency and economy of operations, and (6) industry custom and practice. *Machinists Lodge 1743 (J.A. Jones Construction (J.A. Jones Construction))*, 135 NLRB 1402, 1410-1411 (1962).

As is more fully discussed below, NABET Local 53 submits that, on balance, the foregoing factors weigh in favor of a determination that the disputed work should be awarded to NABET Local 53. Thus, when weighing the Section 10(k) factors, the Board should conclude that a majority of those elements tip in favor of an award of the disputed work to NABET Local 53.

A. BOARD CERTIFICATIONS AND COLLECTIVE BARGAINING AGREEMENTS.

The parties stipulated that there are no Board certifications at issue in this case.²⁵ However, there is strong language in the NABET/NBCUniversal CBA that favors awarding the disputed work to NABET Local 53-represented employees.

In this regard, Section 1.1 of the L Contract – which is expressly incorporated into the NABET/NBC Universal CBA – defines the bargaining unit as encompassing “all Air Conditioning employees and Plant Maintenance employees employed by the Company in *Los Angeles County*, excluding department supervisors.” (Emphasis added).²⁶ The L Contract also describes, with specificity, the duties that NABET-represented employees in Los Angeles County are to perform with respect to HVAC and building maintenance, operation and repair.²⁷ Thus, since the disputed work consists of air conditioning installation and operation

²⁵ Board Exhibit 2, at ¶ 7.

²⁶ Joint Exhibit 1, at 144.

²⁷ Joint Exhibit 1, at 144-45.

1 maintenance at a facility in Los Angeles County (e.g., the Brokaw News Center at the
2 Universal City Studios lot), there is no question that, pursuant to the plain text of the L
3 Contract, the work in question is NABET bargaining unit work, so long as those duties are in
4 support of NBC Universal's broadcast facilities, a fact that is not disputed herein.

5 Nevertheless, Universal and IBEW Local 40 maintain that NABET-represented
6 employees covered by the L Contract have no right to the disputed work based solely on fact
7 that it is being performed at a different location (e.g. the Universal lot). This argument is
8 unavailing; indeed, it is belied not only by Section 1.1 of the L Contract, but also by Side
9 Letter 61 to the NBC Universal CBA.

10 Side Letter 61 was a product of discussions between NABET and NBC Universal,
11 during negotiations which produced the 2006-2009 CBA, about what would occur if the NBC
12 Universal physically moved its broadcasting operations to another facility in Los Angeles.²⁸
13 To this end, Side Letter 61 expressly contemplates a scenario in which the NBC Universal
14 physically transfers its operations to another facility within Los Angeles. Side Letter 61 sets
15 forth an explicit contractual promise that NBC Universal would not use such a transfer as
16 justification to replace bargaining unit employees with non-bargaining unit employees.²⁹

17 In fact, NABET Local 53 insisted that Side Letter 61 be inserted into the 2006 CBA
18 and then made sure that it remained, unchanged, in the 2009-2015 CBA.³⁰ NABET Local 53
19 did this to ensure that NABET-represented employees would be able to continue performing
20 the work they had performed for decades even if the NBC Universal physically moved its
21 operations a couple miles down the road.³¹

22 Unfortunately, NBC Universal decided to breach Side Letter 61 – as well as the L
23

24 ²⁸ Vol. 2: 242-44, 322-24; Joint Exhibits 5A and 5B.

25 ²⁹ Joint Exhibit 1, at pg. 269.

26 ³⁰ Vol. 2: 242-44, 322-24.

27 ³¹ Vol. 2: 270-71.

1 Contract – when it moved its operations from the Burbank Studios to the Brokaw News
2 Center. Indeed, this move was the exact type of change in operations envisioned by Side
3 Letter 61: that NBC Universal would simply uproot the broadcast operations being conducted
4 at the Burbank Studios and transfer them wholesale to the Universal lot. There is no dispute
5 that, prior to the transfer of operations, all NBC Universal broadcast media, on which NABET
6 Local 53 represented employees were employed, were produced at the Burbank lot.³² After the
7 transfer of operations, these broadcasts, with the exception of *Access Hollywood*, were
8 produced at the Brokaw News Center.³³ Nothing else changed. NBC Universal’s operations
9 and broadcasts are the same; NABET 53 bargaining unit employees provide technical support
10 for the broadcasts from the Brokaw News Center, and only the location of those operations
11 are different. As such, Side Letter 61 applies and mandates that the NBC Universal utilize
12 NABET Local 53-represented employees for HVAC and building maintenance work at the
13 Brokaw News Center.

14 Compared to the express provisions in NABET/NBC Universal CBA, though, the
15 AMPTP CBA contains no such explicit language. Although the AMPTP CBA provides that
16 covered employees perform duties related to the installation and maintenance of air
17 conditioning systems, the right to such work is subject to and limited by the “Producer’s
18 historical custom and practice in the normal operation of such equipment and systems
19 consistent with Producers’ historical custom and practice.”³⁴ In other words, IBEW Local 40-
20 represented employees have a right to be assigned air conditioning work under the AMPTP
21 Agreement *if, and only if*, the signatory employer’s historical practice has been to assign that
22 work to IBEW Local 40 employees, and not to employees represented by other labor

25 ³²TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52.

26 ³³ Vol. 1: 66

27 ³⁴ See Joint Exhibit 2, at pg.165.

1 organizations.³⁵

2 Here, as noted, NBC Universal's historical custom and practice has been to assign
3 HVAC work at its broadcasting facilities to NABET-represented employees for at least 40
4 years, NABET-represented employees performed this exact work at the Burbank Studios.³⁶
5 As such, the AMPTP Agreement does not, and should not, apply. Instead, the NABET/NBC
6 Universal CBA governs, and dictates that pursuant to Section 1.1 of the L Contract and Side
7 Letter 61, the disputed work must be awarded to NABET-represented employees. Again, this
8 is especially so given the express work preservation language contained in Side Letter 61,
9 which makes clear that a change in work location will not deprive NABET employees of the
10 work that they customarily performed, and which they are expressly assigned pursuant to the
11 plain language of the NABET/NBC Universal CBA.

12 In light of the foregoing, NABET Local 53 submits that collective bargaining
13 agreement factor strongly favors awarding the disputed work to NABET Local 53.

14 **B. INDUSTRY CUSTOM AND PRACTICE**

15 The evidence adduced at the hearing established that the industry practice in
16 broadcasting facilities – as opposed to motion picture facilities – is that NABET-represented
17 employees perform HVAC work at facilities owned and/or occupied by employers which are
18 signatories to collective bargaining agreements with NABET and/or a local union affiliated
19 with NABET. No countervailing evidence was submitted by either Universal or IBEW Local
20 40.

21 On a local basis, NABET Local 53-represented employees, for at least 40 years,
22 performed HVAC work at the Burbank Studio pursuant to the NABET/NBC Universal

25 ³⁵ Joint Exhibit 2, at pg.165. Neither IBEW nor the Employer offered evidence (e.g. bargaining history)
that shed any additionally light on the proper interpretation of the AMPTP language

26 ³⁶ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52. NABET Local 53 President Steve Ross
27 testified that when he began his employment with NBC Universal in 1975, NABET Local 53 already represented
28 L Contract employees at the Burbank Studio. TR Vol. 2: 249.

1 CBA.³⁷ In addition, NABET Local 53-represented employees perform HVAC building
2 maintenance duties in Los Angeles County pursuant to collective bargaining agreements with
3 Fox Digital.³⁸ On a national level, NABET represented employees currently perform
4 maintenance and HVAC work at NBC Universal's broadcasting facilities in New York City.³⁹

5 To the contrary, neither IBEW nor the Employer presented any evidence of industry
6 practice other than evidence regarding to the performance of the disputed work at the site of
7 the dispute (e.g. Universal Studios). As a result, there is no countervailing evidence in the
8 record with respect to widespread local or national practices that would support an award of
9 the disputed work to employees represented by IBEW Local 40. Accordingly, the industry
10 practice factor weighs in favors of NABET Local 53.

11 **C. EMPLOYER PREFERENCE**

12 NABET Local 53 concedes that Universal prefers for IBEW Local 40 represented
13 employees to perform the disputed work. However, this factor should be accorded very little
14 weight because of the clear and express contractual language in the NABET/NBC Universal
15 CBA which, as discussed *supra*, compels the assignment of the disputed work to NABET-
16 represented employees.

17 In passing the National Labor Relations Act, Congress declared it to be a fundamental
18 public policy of the United States government to encourage stable collective bargaining
19 relationships. Certainly, there is nothing more destabilizing to a collective bargaining
20 relationship than an employer's transfer of bargaining unit work to non-bargaining unit
21 employees in direct contravention of express contractual language prohibiting such conduct—
22 which is precisely what NBC Universal has done in this case. In doing so, NBC Universal has
23 eviscerated NABET/NBC Universal CBA, subverted the parties' contractual understandings,

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25 ³⁷ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52.

26 ³⁸ TR Vol. 2: 221, 224-28; NABET Exhibit 1.

27 ³⁹ TR Vol. 2: 325-26.
28

1 and deprived NABET Local 53 of the benefit of its bargain.

2 The Board should not sanction such a result simply because the Employer's
3 "preference" is to assign the work to another union. Indeed, such an outcome would run in
4 direct contravention to the Act's command that stable collective bargaining relationships are
5 the goal of federal public policy and should not lightly be disturbed. More to the point, it
6 would simply elevate form over substance and allow one employer – NBC Universal – to
7 evade its bargaining responsibilities merely because it has located itself on the property of a
8 third party which "prefers" another labor organization over the union with which NBC
9 Universal has a decades-long bargaining relationship. The Board should, therefore, reject the
10 position taken by Universal Studios LLC and IBEW Local 40 and find that Section 10(K)
11 proceedings are not the proper forum for eviscerating existing, long standing and express
12 contractual language that pertains directly to the work at issue.

13 **D. SKILLS AND KNOWLEDGE NECESSARY TO PERFORM THE WORK**
14 **IN DISPUTE.**

15 Although the Employer and IBEW Local 40 offered evidence that Local 40 employees
16 possess the skills and knowledge to perform the disputed work, the evidence also establishes
17 that the skills and knowledge of NABET Local 53 employees are equal to, if not greater, than
18 those of IBEW Local 40 employees. After all, both sets of employees perform, or performed,
19 virtually the same type of work and possess extremely similar skills.

20 First, the record evidence illustrates that employees represented by NABET Local 53
21 performed all facets of building maintenance and HVAC work at the former NBC Burbank
22 Studios. This work included the upkeep and maintenance of various HVAC systems then
23 extant at the Burbank Studios, as well as the systems appurtenant thereto (i.e., boilers, heat
24 exchange systems, etc.).⁴⁰

25 Further, the work that NABET Local 53 employees performed at the Burbank lot was
26

27 ⁴⁰ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52; See Joint Exhibit 1, at pp. 144-45.
28

1 virtually identical to the work currently performed by IBEW Local 40 employees at the
2 Burbank lot. The only difference in the work is that the HVAC systems at the Universal lot
3 were manufactured by a different company (Siemens) than the HVAC systems at the Burbank
4 lot (Honeywell).⁴¹ However, there is (a) no evidence that the Siemens system is materially
5 different from the Honeywell system or (b) even if the systems are different, there is likewise
6 no evidence that employees represented by NABET Local 53 are incapable of operating
7 Siemens systems.⁴²

8 Likewise, the evidence establishes that NABET Local 53-represented employees
9 would have learned how to operate the Siemens systems with little difficulty had they been
10 given the opportunity. In this regard, Universal's Chief of Engineering, Kevin Watson,
11 admitted that someone with an experience working on HVAC systems – which NABET-
12 represented employees have – would be able to quickly get up to speed on a Siemens system.⁴³
13 Mr. Watson also testified that two of the IBEW employees currently performing the disputed
14 work had no previous experience with Siemens HVAC systems and therefore had to be
15 trained.⁴⁴ Given the extensive experience NABET employees have with HVAC systems, there
16 is no doubt that NABET Local 53 represented employees also would have been able to learn
17 how to operate the HVAC systems at the Brokaw Center.

18 The superior skills and experience of NABET Local 53-represented employees is also
19 evident in the fact that there is no specific IBEW Local 40 represented classification – set
20 forth in the AMPTP CBA – that is singularly devoted to the upkeep, maintenance and/or
21 repair of HVAC systems. On this score, the record demonstrates that IBEW Local 40

23 ⁴¹ TR Vol. 1: 167-71.

24 ⁴² Indeed, there is no evidence, for example, that Universal ever utilized NABET Local 53 employees
25 and found them to lack the skill, knowledge and ability to operate and maintain the HVAC systems at the Brokaw
News Center. TR Vol.

26 ⁴³ TR Vol. 2: 172

27 ⁴⁴ TR Vol. 2: 171-72

1 represented employees are not specifically assigned to a classification uniquely responsible
2 for the upkeep, maintenance and repair of HVAC systems employees. Instead, they perform
3 many different types of building/equipment maintenance work.⁴⁵

4 By contrast, the NABET/NBC Universal CBA establishes separate and distinct
5 classifications of employees who are specifically called upon to perform HVAC work. On this
6 issue, the NABET Local 53/NBC Universal CBA, unlike the AMPTP CBA, is very explicit
7 with regard to the duties assigned to the personnel and classifications extant in the L Contract.
8 For example, the L Contract describes the work performed by the classification of Watch
9 Engineer (Section L 2.2 to the L Contract) in the following minutia:

10 “It shall be their duty to operate, maintain and repair boilers, heating apparatus,
11 compressors, refrigeration and air conditioning equipment, pumps, fans or any other
12 equipment associated with or appurtenant to the air conditioning plant. . .”⁴⁶

13 A similarly precise description of duties is also attached to the classification of "Plant
14 Maintenance Mechanic" as set forth at Section L 2.3 of the L Contract. Here, the L Contract
15 sets out three (3) specialized sub-sets of classifications - Electrician, Plumber and Carpenter
16 –each of which has an assigned array of responsibilities.⁴⁷ Again, and in contrast to the
17 NABET Local 53/NBC Universal CBA, no such specific language or classifications exist
18 within the four corners of the AMPTP CBA.

19 Based on the foregoing, NABET Local 53 submits that the “skills and experience”
20 factor favors awarding the disputed work to NABET represented employees.

21 **E. PAST PRACTICE**

22 Despite the Employer’s current preference for utilizing IBEW represented employees
23 on the HVAC systems at the Brokaw News Center, the Employer’s past practice has been to

24
25 ⁴⁵ Joint Exhibit 2, at pg. 165.

26 ⁴⁶ Joint Exhibit 1, at pg. 144.

27 ⁴⁷ Joint Exhibit 1, at pg. 145.

1 use NABET represented employees on similar work. Although IBEW Local 40 employees
2 may have been utilized for maintenance/HVAC work in support of motion picture
3 productions, the enduring practice has been for the Employer to utilize NABET represented
4 employees at broadcasting facilities such as the Burbank Studios lot, where NABET personnel
5 performed HVAC work for more than 40 years.⁴⁸

6 The Brokaw News Center, of course, is a broadcasting facility. As such, the current
7 arrangement, under which IBEW Local 40 employees are used at the Brokaw News Center's
8 broadcasting facilities, is actually contrary to the past historical practice of the Employer.
9 Thus, awarding the disputed work to NABET Local 53 represented employees would correct
10 this divergence from past practice. On this basis, NABET Local 53 submits that the "past
11 practice" factor favors assignment of the disputed work to NABET-represented employees.

12 **F. EFFICIENCY AND ECONOMY OF OPERATION**

13 On this issue, the evidence does illustrate that a complement of IBEW Local 40
14 represented employees is present, on a fairly consistent basis, at the Universal lot. Yet, as
15 noted, the evidence in this regard did not illustrate that there exists a crew of IBEW Local 40
16 represented employees whose sole responsibility is to support HVAC systems and their
17 appurtenant processes (such as boilers, heat exchange systems, etc.).⁴⁹

18 These type of specialty crews also existed when NBC Universal occupied the Burbank
19 Studios. To this end, the record testimony establishes that during the time NBC Universal
20 produced its broadcast media at the Burbank Studios, there existed a group of NABET Local
21 53 represented employees who were solely responsible for maintaining and repairing HVAC

24 ⁴⁸ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52.

25 ⁴⁹ Of course, NABET Local 53 employees are not present at the Universal lot solely on account of
26 Universal's decision to assign the work at issue to IBEW Local 40.

1 and related systems.⁵⁰ These employees were, and remain, well trained and there is no
2 evidence that employees represented by NABET Local 53 would be any less efficient or
3 economical than those workers represented by IBEW Local 40.⁵¹

4 Additionally, the evidence established that the Brokaw News Center is a "stand alone"
5 facility with regard to the HVAC and other environmental/power systems that support the
6 building. As was stated by Mr. Brent Whaley- the Employer's Director of Facilities - the
7 environmental/power systems that support the Brokaw News Center are not integrated with
8 the HVAC/power grid that ties into all other structures on the Universal Lot that are
9 maintained by employees represented by IBEW 40. Rather, the HVAC/environmental/power
10 systems that support the Brokaw News Center are all unique to the Brokaw Center and supply
11 HVAC/power only to the Brokaw News Center itself.⁵²

12 Thus, and given the fact that the HVAC/power systems that support the Brokaw News
13 Center are entirely separate from the systems that supply HVAC/power to the remained of the
14 Universal Lot, there is no logical reason why a separate crew, represented by NABET Local
15 53, could not efficiently and economically service, maintain and support the HVAC/power
16 distribution systems at the Brokaw News Center, just as the NABET Local 53 employees did
17 when the work was located at the Burbank Studios.

18 Put simply, the NBC Universal's Burbank studios operated efficiently with NABET
19 represented employees performing HVAC and related work. There is no reason to believe that

21 ⁵⁰ TR Vol.1: 65-66, 70-71, 75; TR Vol. 2: 223-24, 233-34 248-52; Joint Exhibit 1, at pg. 144-45.

22 ⁵¹Universal and IBEW offered some evidence of employee interchange between the Brokaw News
23 Centers and other facilities on the Universal lot, and asserted that this interchange was important because
24 maintenance work at the Brokaw News Center is a 24 hour operation. However, the Employer presented no
25 evidence that NABET personnel would be unable to staff a 24-hour operation. In fact, Mr. Watson testified that
he never inquired as to whether NABET personnel would be able to satisfy the Employer's needs for round the
clock maintenance work. TR Vol. 1: 148.

26 ⁵² TR Vol. 1: 131-32; *see also* TR Vol. 1: 104-08 and Employer Exhibit 3.

1 the Brokaw News Center would operate any less efficiently with NABET-represented
2 personnel. As such, the “efficiency” factor favors NABET Local 53.

3 **V. CONCLUSION**

4 At the end of the day, NABET Local 53 asserts that strong, clear and unequivocal
5 contract language should dictate the resulting award of jurisdiction. Here, that language is
6 ensconced within the NABET Local 53/NBC Universal CBA and is simply not present within
7 the AMPTP CBA. Moreover, the Board should not allow a Section 10(K) proceeding to act,
8 as apparently intended here, as means for an employer to obtain through the Board's processes
9 what it could not acquire at the bargaining table and, indeed, is the very opposite of what that
10 employer proposed and alleged to at the bargaining table.. Therefore, NABET Local 53
11 contends that the work at issue in this proceeding – the operation, maintenance and repair of
12 the HVAC and related environmental and building support systems appurtenant to the Brokaw
13 News Center – must be assigned to employees represented by NABET Local 53.

14
15 DATED: May 29, 2015

Respectfully submitted,

16 **LEVY, FORD & WALLACH**

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18
19 By: /s/ Lewis N. Levy

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is 3619 Motor Avenue, Los Angeles, CA 90034. I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

On May 29, 2015, I served the following document(s) **POST HEARING BRIEF SUBMITTED ON BEHALF OF INTERESTED PARTY NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, LOCAL 53, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO** on interested parties in this action:

☐

via UPS

☒

I enclosed document(s) in a sealed envelope to:

referenced person(s) and addressee(s), by placing the envelope for collecting and mailing, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services, in a sealed envelope with postage pre-paid.

☐

by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California addressed as set forth below.

☒

by personally delivering the document(s) listed above to the person(s) listed on the electronic email addressee(s) set forth below.

I am "readily familiar" with the firm's practice of service of process. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business.

I declare under penalty of perjury that the above is true and correct.

Executed on May 29, 2015, at Los Angeles, California.

/s/ Diane Morgenstern

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